No. 286.

Brief of Putnam for Appt.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1896

JOSEPHINE W. WUPPERMAN,
Libellant and Appellant,
against
The Steamship CARIB PRINCE, ERNST LEGGE,
Claimant.

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ON CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE APPELLANT

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BRIEF FOR THE LIBELLANT AND APPELLANT.

This is a suit in admiralty begun in the District Court of the United States for the Eastern District of New York. Libellant was an owner of cargo carried on the steamship *Carib Prince* in August and September, 1893, from Trinidad to New York. The front or fore peak of the steamer was built as a ballast tank for trimming the vessel. Libellant's cargo was carried in the No. 1 hold, just abaft this tank. On leaving port the tank was empty. Indeed, it had not been filled on any previous voyage. The steamer drew 14 ft. 10 in. forward and 16 ft. 10 in. aft, being two feet by the stern (Legge, 41).

On Sept. 3d, while on the voyage, the master changed the trim so as to bring the ship more by the head and upon an even keel, by filling this fore peak with 83 tons of water. The weather was fine, the ship was not stopped, and the tank was filled at ten o'clock in the evening.

At 6 o'clock in the morning of the fifth of September the ship's carpenter sounded the tank and found it partly empty (Scott 282, Engineer's log, p. 164). Captain Legge first testified that this discovery was made the next morning, *i. e.*, Sept. 4th (47), but after looking at the log, he corrected himself and said that this time since the tank had been filled was 32 hours (80).

The number one hold was found with 3 to 4 feet of water at

the after end and about 8 inches deep at the forward end. The water was heard gurgling in forward. It was spurting out of a rivet hole in the bulkhead with considerable force against the cargo.

This rivet was on the port side about three or four feet from the floor and about two feet or eighteen inches inboard from the ship's side. The rivet end or clinch was found beneath on a bag of cargo; and the other end still in the hole, was driven back into the tank and a wooden plug inserted.

The rivet hole was countersunk on the hold side of the bulkhead. The rivet passed through the lap of the bulkhead plates, and the transverse angle iron or knee-tie on the forward side of the bulkhead. It was the end of a series which attached this knee tie to the forward side of the bulkhead. The rivet had broken off in the hole. A part of this rivet was marked for identification, but it was mislaid and not found at the trial in the District Court. There is a difference in the testimony as to the quality of the fibre of the rivet itself.

Keeys, the engineer of the vessel, examined the rivet head, and declared that it was inferior iron, without fibre, short and brittle (142, 144). Scott, the mate, said that it was fair iron (307).

The rivet holes in the plates were not true. One orifice being higher than, or at one side of, the other, caused the rivet to be headed up one sided.

Mr. Keeys, the engineer, testified that he could see the rivet had been headed up *one-sided*, that is, the top had not spread evenly over the portion which had been countersunk, and

"that would indicate that one end of rivet had been up and one *down*."

Q. *Does that mean that the holes had not been bored true?* A. *That is the exact meaning of it* (147).

Q. Did you put the plugs in these holes? A. I was there when *it* was put in.

Q. Did you see the holes? A. Yes, sir.

Q. *Did the holes come true?* A. *The holes did not come true; they cut them out so they would come true.*

Q. Who did? A. The boilermakers.

Q. When? A. When the repairs were made;

Surveyor Clark says (350) that he examined the *Carib Prince* on September 15th after arrival when the chief en-

gineer removed the plug from this rivet hole, "The iron wasn't fair between the two plates" (355) and that he put two fingers in the hole * * that the iron on the inside plate was battered (353), the hole showed smaller on the inside than on the outside * * it didn't appear to be *fair* in the hole between the two plates, it was out about an eighth of an inch (354), it was rounded on the edge of the inner plate (358), when I put my finger in one was a little more on the starboard, the other on the port inside; that he judged by his eye the extent of the difference (356).

On arrival at New York a bolt was put into this rivet hole, and after it had been removed *in January afterwards*, the witness Saunders claimed then to have seen that the holes were only a shade untrue which he estimated was one-sixteenth of an inch (251–261). But he had not seen the rivet hole at the time the vessel arrived on the voyage.

The men who made the repairs were not produced.

Mr. Quinn, an expert, testified to the use of a tapering piece of steel called a drift pin by which such unfair holes are upset so as to get the rivet in at some angle. He also testified that driving a rivet through holes 1/16 or 1/8 of an inch out of line weakened the strength of the rivet one-third. That 6,000 lbs. would be the normal strength of $\frac{3}{4}$-inch rivet, and that

"If a rivet is driven in at an angle it has not the same strength as a rivet driven through a fair hole" (370).

Claimant's witnesses (examined under the English Commission)—who were Short, the builder (169), Wooland, the foreman riveter (185), Sharp, Lloyd's surveyor (219), James, the naval architect (235), and Lynn, his inspector (204) all concur in saying that if the holes do not fair they should be *rimed* out. Short, 180, Wooland, 198, Sharp, 230, James, 246, Lynn, 215.

They also all concur in saying that the *drift-iron* was used on this tank bulkhead. Short, 176, Wooland, 193, Sharp, 226, James, 242, Lynn, 210.

Quinn described (364) the effect of not fairing of the rivet holes: that in *pinning* (*i. e.*, with drift-pins) the gusset plate (knee-tie) to the side of the ship and rivetting the bulkhead by the angle iron to the gusset plate would put a strain on either the bulkhead or ship's side.

The evidence thus clearly showed a case of "clagging"—that is driving rivets through holes punched irregularly in which the rivet never has its full strength, and the uneven and diagonal strains from the opposing surfaces are constantly tending to break the weakened rivet by their divergent and tortional stress.

Such a negligent and dangerous mode of riveting in English yards is a matter of common knowledge, and is described at length in the appendix to this brief (page 25).

The best proof of the loose, angular, and "upset" riveting is the leak. The clinch end broke off in the countersink on the hold side of the bulkhead. This was in the third plate aft from the tank. The water pressure from forward tended to keep in place the rest of the rivet, which was probably more than two-thirds of its original length. Yet this forward part of the rivet was such a loose fit in the holes punched in the knee-tie and in the lap of the plates, that the water was found spurting through in a jet. Such a stream could not run round a well-fitted rivet. At most it would "weep," or let water drip through. This flow of water about the rivet, with its entire cylindrical part unbroken, is conclusive proof of bad fitting.

It was contended that the rivet's weakness was due to hammering it after it was cold, thus making it brittle, and Engineer Keeys testified to this possibility.

Builder Short (179), foreman Wooland (195), Surveyor Sharp (228), Architect James (244), and Surveyor Lynn (212) all say that these three-quarter inch rivets were all headed hot—that it is impossible with that size to head them cold, and that there is no danger of too much hammering.

Wooland (195) says: "In water-tight work it is never done cold * * with a rivet of that size it would be practically *impossible* to knock it down cold" and (201) "I never saw a "heated rivet hammered too much. *The thing* is to get them "to hammer it sufficiently. We have to watch them to see that they hammer it properly."

Quinn says (343) that if driven too cold and it crystallized it would break *in the centre* "and both pieces remain in the "holes,"

In this case the clinch or head came off at the countersink on the hold side of the collision bulkhead.

The damage to the cargo was primarily due to this rivet but the accumulation of four feet of water in the cargo hold shows that the proper water clearances to the bilges were closed.

The limber boards covering the bilges were fitted so tight that no water passed into the bilges.

Capt. Legge says (34) that he had the cargo moved from the sides of the ship so as to get at the limber boards so as to allow the water to get into the bilges and be pumped out, and after moving the cargo (36) we bored holes to let the water go through, and (37) "Q. Until you bored these holes the water "stayed there? A. Yes, sir."

That these limber boards entirely failed to let the water out is also shown by the fact that no water was found by sounding on Sept. 4 (289),(325), (337), (291).

Capt. Legge testified (36, 43,) that the sluices between the bilges and engine room are kept open, but Mate Scott denied this (288). The chief engineer was not asked on this point.

Carpenter Hopkins says (331) that the water in this hold was up to his knee when standing on the dunnage * * (332) he bored five three-quarter-inch holes through the limbers on each side of the ship, all *at the after end* close together.

Mate Scott says (286) he shifted the cargo in the wings and *got the* limber boards up in the after end. "Q. Did you get "them up? A. No: we couldn't get the back one up, *but we* "*cut through* to let the water run down to the strum boxes" (*i. e.*, the strainer in the bilge, 286).

Capt. Legge says (45) that the limbers were not raised at all and 46) when they got to New York they came out "*hard;* "*had to pry them open with a bar.*"

Surveyor Congdon says (407) the limbers are boards covering the water course and should always be made so as to lift out, and he had seen thousands and had never seen them so tight that they would not lift out—that (406) the purpose of the bilges is to make a water course in the ship, to keep the holds

dry and the cargo from being damaged by an accumulation of water.

Capt. Legge says (25) the bilges in No. 1 hold would be 18 inches wide * * (24) that there is a tank runs the entire length of the vessel, divided by the bulkheads, the sides of the tank and the sides of the ship making the bilges, which are triangular spaces * * (41) two feet deep in No. 1 hold aft and 15 to 18 inches forward.

It is obvious this bilge space would contain a large body of water which ought to have run through the sluices and shown in the well when sounded, but that it did neither is certain *and proves the bilges were made useless by the tight limber boards.*

The *Carib Prince* was, therefore, unseaworthy as to this rivet, as both Courts have held, and was also unseaworthy as to lack of water clearance at the bottom of the hold, though the Courts below apparently have passed this over in their examination of the facts.

It appeared that the *Carib Prince* was built in England in the Spring of 1893, under supervision of the architect and surveyor employed by the owner (212, 250); was chartered by the owner to George Christall, of the Trinidad Direct Line (Claimant's Ex. A, p. 148), by which the vessel was covenanted as tight, staunch and strong, and in every way fitted for the service (438), to be maintained in a thoroughly efficient state in hull and machinery (440). Also that bills of lading *with the usual negligence clause* were to be used (450). The libellant's goods were shipped under a bill of lading, making no refer ence to this charter-party, but excepting:

"The act of God, the Queen's enemies, Pirates, Robbers, Restraints of Princes, Rulers and People, Loss or Damage from Heat or Fire on board, in hulk, craft, or on shore, explosion, Steam, *Accidents to or latent* defects in Hull, Tackle, Boilers and Machinery, or their appurtenances, Jettison, Barratry, any act, neglect or default whatsoever of Pilots, Masters, or Crew in the management or navigation of the Ship, Quarantine, Collision, Stranding, and all and every other dangers and Accidents of the Seas, River, or Steam Navigation of whatever nature or kind always excepted" (p. 146).

The learned District Court, Hon. C. L. Benedict, held that

the libellant's damage was due to a latent defect; and following the *Majestic* (60 Fed. Rep., 624) in Circuit Court of Appeals and the *Laertes* (12 Prov. Div., 187) dismissed the libels (pp. 166, 169). On appeal Judge Shipman, delivering the opinion of the Court, held that (1) the defect in the rivet was a latent one that occurred at the time of the ship's construction; (2) the exception of latent defects covered this rivet, although defective before shipment; (3) such exception was valid under the provisions of Section 2 of the Harter Act, and accordingly affirmed the dismissal of the libels. This Court thereupon issued its writ of *certiorari* to review these decisions.

I.—THIS DAMAGE TO LIBELLANT'S CARGO IS NOT WITHIN THE EXCEPTIONS OF THE BILL OF LADING.

The argument is that the libellant's contract, by the words "Accidents to, or latent defects" covered this cause of damage. Would any merchant in his sober senses make the agreement which it is argued has been entered into by libellant? This is what libellant is supposed to have agreed with claimant:—Although your ship is unfit to carry cargo in the fore-hold, and a rivet, defective at time of construction, will let in water from the tank, yet I agree that you, the shipowner, notwithstanding these existing defects, may put my goods under this leak, so that when you fill this tank, you may run a jet of water on them without liability for damages!

(*a.*) The construction of the contract:

For the purpose of engaging in this trade the owner covenanted for the continued fitness and seaworthiness of his vessel, stipulating only with the charterer for a negligence clause in the bills of lading. By the law of England and of this country, the condition or warranty of seaworthiness is always implied.

Lord Esher said in the *Maori King* [1895], 2 Queen Bench, 550, 555:

"If you imply a stipulation in the bill of lading, the result is the same as if it were actually written in it. The moment

you can, by implication, insert a stipulation in a written document, it is, though not expressed, as much a part of the written document as if it had been actually written in it.

"The principle on which a condition or a warranty or any other stipulation is implied will apply to many other contracts, but whether that implication can be made must be determined in each case when it arises. In the present case I have no doubt that, according to the ordinary rules which govern the Court, the stipulation in question is to be implied and therefore to be introduced into the contract. But it applies only to the state of things existing at the commencement of the voyage, and not to anything which may happen after the voyage has begun.

"But there are exceptions in this bill of lading just as in every bill of lading which is in the ordinary form; and, if there are in the contract express stipulations which are in terms inconsistent with the primary implication to which I have referred, that stipulation cannot be implied. In that case there would be express stipulations with regard to the condidition of the machinery or the ship at starting, and when there are express stipulations as to any matter you cannot imply any others. But the exceptions here are, in my opinion, *of the same kind as exceptions in ordinary bills of lading*—that is, with regard to matters which may happen during the voyage. They are exceptions from the obligation of the shipowner to deliver the goods at the end of the voyage in the same condition as they were intrusted to him at its commencement. They do *not apply to the primary warranty of the condition of the machinery at the time when its application is to begin.*"

Every engagement of the shipowner, being based on this primary condition or warranty of seaworthiness of his vessel at the commencement of the voyage, and the exceptions having therefore been judicially construed as relating to events happening on the voyage, do the words "accidents to, or latent defects" in these exceptions abrogate the warranty of seaworthiness of the ship, at the time of loading?

This is decided in the *Caledonia*, 157 U. S., 124, 137. In that case the bill of lading covered "defects," and counsel for the appellant Henderson argued at page 16 of his brief:

"It is very doubtful if any force whatever can be given to the word "defects" in the bill of lading, if it does not cover defects existing at the time of the contract. The word describes an existing condition of the machinery, at the time the contracts were made, and is inapt to describe an injury thereafter to be done to it."

By the judgment of the majority of the Court this contention was rejected. The following clear canon of construction was announced.

"As is well said by counsel for appellee, the exceptions in a contract of carriage limit the liability, but not the duty of the owner, and do not, in the absence of an express provision, protect the ship owner against the consequences of furnishing an unseaworthy vessel. *Steel* v. *State Line Steamship Company*, 3 App. Cas., 72; *Gilroy* v. *Price*, App. Cas. (1893), 56; *The Glenfruin*, 10 P. D., 103; *Kopitoff* v. *Wilson*, 1 Q. B. D., 377; *Tattersall* v. *National Steamship Company*, 12 Q. B. D., 297; *Thames & Mersey Ins. Company* v. *Hamilton*, 12 App. Cas., 484. 490. If the exceptions are capable of, they ought to receive, to use the language of Lord Selborne in *Steel* v. *Steamship Company*, "a construction not nullifying and destroying the implied obligation of the shipowner to provide a ship proper for the performance of the duty which he has undertaken."

"There was no exception in this bill of lading which in express words exempted the shipowner from furnishing a seaworthy vessel at the commencement of the voyage. As the exceptions were introduced by the shipowners themselves in their own favor, they are to be construed most strongly against them, and we perceive no reason why the obligation to furnish a seaworthy vessel should be held to have been contracted away by implication. Their meaning ought not to be extended to give the shipowner a protection, which, if intended, should have been expressed in clear terms.

"Moreover, the words 'delays,' 'steam boilers and machinery, or defects therein,' formed part of a long enumeration of the causes of damage, all the rest of which related to matters subsequent to the beginning of the voyage, and, by another familiar rule of construction, they should be treated as equally limited in ther scope" (pp. 137, 138).

The defect in the *Caledonia* was a latent defect in her shaft, and the words of the bills of lading in that and this case are here set side by side.

CALEDONIA.

"The act of God, the Queen's enemies, pirates, restraint of princes and rulers, perils of the seas, rivers, navigation and land transit, of whatever nature or kind, restrictions at port of discharge, loss or damage from delays, collision, straining, explosion, heat, fire, *steam boilers and machinery or de-*

CARIB PRINCE (fol. 430)

"The act of God, the Queen's enemies, pirates, robbers, restraints of princes, rulers and people, loss or damage from heat or fire, on board, in hulk or craft or on shore, explosion, steam, *accidents to or latent defects in hull*, tackle, boilers and machinery, or their appurtenances, jettison, barratry, any act, neglect

fects therein, negligence, default or error in judgment of pilots, master, mariners, engineers, stevedores or any other person in the employ of the steamship, or of the owners or their agents *excepted.*"

or default whatsoever of pilots, masters or crew in the management or navigation of the ship, quarantine, collision, stranding and all and every other dangers and accidents of the seas, rivers or steam navigation of whatsoever nature or kind always *excepted.*"

Notwithstanding this plain rule of construction the Court below said :

" A defect in order to be latent must have been not discoverable at the time of shipment. It could not in its nature have been capable of discovery then and have become capable of evading discovery subsequently. A construction which should say that latent defects meant only those which had become latent since the vessel left the wharf and could not mean previously existing defects, savors of the distinctions of the schoolmen ; and if latent defects existing upon the voyage are exempted, those existing at the time of shipment are included, for they are the same" (p. 213).

Suppose, for the sake of argument, that it were a case of necessary construction of terms as supposed—that the words " latent defects " would be meaningless, unless applied to the beginning of the voyage. Does it follow that such redundant and ill chosen verbiage inserted among the carrier's own exemptions—words selected by the carrier himself—are therefore to be permitted to destroy the primary warranty of seaworthiness ?

The courts rather regard such incoherent and illogical documents as " a considerable puzzle," Taylor *v.* Liverpool, etc., Co., L. R. 9, Q. B. 146, as involving no principle of law but only careless and slovenly documents.

Gray *v.* Carr, 6 Q. B., 549.

But this necessity of construction does not exist.

The carrier by sea who has provided a fit and seaworthy ship, notwithstanding subsequent sea perils, has duties toward her cargo. If his mast is sprung or a collision occurs with a derelict, or if a deck plank be cracked, the master is bound to know and discover such accidents and resulting defects as soon as they exist. Failing to do this the ship is liable.

The *Nith*, 36 F. R., 86.

Suppose that during a storm the mast is internally weakened and that thereafter and on a later stage of the voyage it is carried away doing great damage, is the latent defect any the less because it was originally developed and resulted in damage to cargo on one and the same voyage? If it be answered that for such a defect the master would not be liable and would need no exemption, the answer is that the *Carib Prince* as a common carrier would otherwise be *prima facie* liable, and that this exception, like that against governmental restraints, effectually shifts the burden of proof.

The *Majestic*, March 29th, 1897.

Suppose that an Eastbound China steamer were to leave New York with cargo for Yokohama *via* Gibraltar, Suez and Hong-Kong. Heavy weather being encountered on the Atlantic the shaft is strained and weakened like that of the *Caledonia*, and although the vessel puts into Gibraltar, Suez and Hong-Kong the damage from the latent defect was not remedied, until finally the shaft breaks between China and Japan. Would not that exception of *latent defects* apply, and would any court decline to give it force because the defect did *not* exist at time of shipment?

It certainly is novel to contend that the general exception of "defects" leaves the carrier liable on his warranty, but that a less exemption of one kind of defects, namely, those which are latent, releases the shipowner from this same warranty.

As was also decided in the *Caledonia*, the connection in which the terms appear limits their scope. Not only are "latent defects" found among an enumeration of causes of damage happening on the voyage, but they are in a special subdivision of this enumeration and are joined to acts of the servants, engineers and navigators of the vessel. First are found those causes of major force—of interference from with out—included under the act of God, the Queen's enemies, pirates, robbers, restraints of princes, rulers and people. Second, those losses due to the agency of the ship's servants, whether accidental or culpable; loss or damage from heat or fire on board, in hulk, or craft, or inshore explosion, steam, *accidents to or latent defects in hull*, tackle, boilers and machinery, or their appurtenances, jettison, barratry, any act,

neglect, default whatsoever of pilots, masters or crew in the management or navigation of the ship, quarantine, collision, stranding and all and every other dangers and accidents of the seas, rivers, or steam navigation. The word "quarantine" is evidently a later insertion and is perhaps out of its true logical order, but the list will be examined in vain to find in either class one other expression that in any way relates to the *owner's* duty to have a fit ship at the beginning of the voyage.

The language of Chief Justice Fuller may be re-enforced by that of Lord Penzance in The Quebec Ins. Co. *v.* Bank, L. R., 3 P. C., 242, where he said :

" It is said that the language of the policy is such, that the Court ought not to imply therefrom the ordinary warranty of seaworthiness. No doubt it is competent to parties by language in a contract to which, as an ordinary rule, the law applies some implied condition, *by express, pertinent and apposite language*, to exclude that condition, and the question in this case is, whether the parties have done so? This, like all questions of contracts, is a question of the intention of the parties. The law by which the warranty of seaworthiness is attached to the contract is a law known to the parties who make contracts of this description, and, therefore, they are prepared to understand that the implied warranty will be attached to the contract they are about to make. *If, therefore, there is an intention to exclude that implied warranty it ought to be expressed in plain language.*"

In the cargo *ex* the *Laertes*, relied on in the courts below, the clause added to latent defects the words, "*even existing at the time of shipment*" obviously a very different contract.

Suppose that instead of the libellant's goods being damaged, the ship had, in the same way wet the goods of the charterer. No question would arise that the charter party had expressly made the ship and owner liable. But that express covenant of seaworthiness contained in the charter party was no more than is *implied* in every shipment upon a general ship, alike by English and American law. It is as positively a duty of the owner of the *Carib Prince* towards libellant as to the charterer from the general liability of the vessel as a common carrier.

(*b.*) This bad riveting was not alatent defect.

The defect in the rivet hole was known at the time the holes were punched ; it was known when the lap was in pos-

ition and the holes did not meet "fair and true;" it was known when the drift pin was resorted to to straighten the irregularity; it was known to the men who drove the rivet; and it should have been known to the claimant's architects and surveyors whose duty required them to interfere and condemn such improper construction.

It is entirely different from a flaw in a welding which is a secret vice not ascertainable, and generally not due to any fault either before, during, or after construction.

Suppose caulkers on a wooden ship do not rightly drive in the oakum, but leave the seams improperly caulked. Suppose that the surveyor neglects to find this bad seam and the copper sheathing is nailed on, and, thereafter, on the first strain with cargo aboard this seam admits water. Is this defect latent because it escaped the eye of the surveyor?

By the fair rules of interpretation the word *latent* as applied to excepted defects in a vessel or machinery, should not mean those things that a builder or the owner's surveyors may conceal so that thereafter the vice may be hidden from view, but should only embrace those undiscoverable imperfections that cannot be found by any care or skill.

12 Am. & Eng. Encyclopædia of Law, p. 910.
Article "Latent Defects."

In case where a railroad purchased its car axles ready built from a manufacturer, the New York Court of Appeals held:

"That although the defect was latent and could not be discovered by the most vigilant external examination, yet, if it could be ascertained by a known test applied *either by the manufacturer* or the defendant, the latter was responsible."

Hegemann *v.* Western Railroad Co., 13 N. Y., 9, 25.

This decision has been cited with approval by this Court in an admiralty suit.

The *City of Panama*, 101 U. S., 459, 462.

In case of the *Rover*, 33 F. R., 516, it is said:

"This warranty extends to latent defects, not discoverable by prior examination."

In case of the *Laertes* Mr. Justice Butt said:

"The *Laertes* broke down from a latent defect which, I find as a fact, could not have been discovered by the exercise of any reasonable care on the part of the owners, but the flaw in the shafting which led to the breakdown existed when the ship started, and, therefore, she was not seaworthy for the voyage."

"Defects must exist which no skill can detect and the effects of which no foresight can avert."

Readhead *v.* Midland R. R. L. R. 4, Q. B., 379, 385.

"If they had arisen from a latent defect *which no prudence or skill could perceive.*"

Steel *v.* State Line Co., 3 Appeal Cas., 72.

In Work *v.* Leathers, 97 U. S., 379, 380, this Court held:

"If a defect without any apparent cause be developed it is to be presumed it existed when the service began."

Applying the same presumption of fact, if admitting water into this ballast tank developed this defect the first time it was tried after the vessel had been at sea, it is to be presumed that a similar test by water before taking on this cargo would have disclosed this defect, which therefore would readily have been discovered. Instead, therefore, of being a latent defect it was due to insufficient preparation and examination before entering on the voyage.

The *Edwin I. Morrison*, 153 U. S., 199.
The *Majestic*, Mch. 29, 1897.

It is true that claimant showed that the engineer looked at this bulkhead and also entered the tank, but the simple test *letting in water* was *not* then tried, although the vessel had just been through a West India hurricane.

As this Court has said:

"In relying upon external appearances in place of known tests, respondents took the risk of their inability to satisfactorily prove the safety of the caps and plate, if loss occurred through their displacement."

The *Edwin I. Morrison*, 153 U. S., 199, 215.
See Penn. Co. *v.* Roy, 102 U. S., 455.
Robinson *v.* Central R. R. Co., 8 F. R., 877.

In case of cargo damaged by water, supposed to have come through a defective rivet hole in the tank, Judge Brown said:

"I do not find any legal principle upon which the risk of such defective riveting should be thrown upon the goods, and not upon the ship.

The *Bergenseren*, 36 F. R., 700, 701.

Every presumption of law is against relaxing the duty of the shipowner to supply a seaworthy ship which is the basis not only of all his exceptions from liability but for the cargo's marine insurance.

Thus Maclachlan, in his excellent treatise on shipping says, 418:

"As the strictness looked for in fulfilling a waranty is required here, his care should carry him *as far as the carrier's contract requires him to go, and further than that*, even to the letter of the law in its exactions under the insurer's contract."

The Quebec M. I. Co. *v.* The Com. Bk, L. R., 3 P. C., 243 Lord Penzance said:

"It would seem, therefore, an odd conclusion to come to, to say that * * the underwriters * * should have intended to surrender the warranty of seaworthiness, *which, after all, is the main protection to their interests.*"

2 Arnould M. Ins., 649 (6 ed.): "There is nothing in the law of marine insurance more important to commerce and the preservation of human life than this warranty" (of seaworthiness).

It follows that if the carrier may by contract relieve himself from the warranty of seaworthiness and instead of a seaworthy vessel, may substitute one that he believes to be seaworthy, or has used diligence to make seaworthy, but which in fact is not seaworthy, the shipper can obtain no insurance for his goods, and the anomaly in the law would exist that it requires the insured to provide a seaworthy vessel, and allows the carrier to furnish one that is not so.

This is pointed out in the opinion of Chief Justice Fuller in the *Caledonia*, where he quotes from the decision in the *Eugene Vesta*, 28 F. R., 762, by Mr. Justice Brown as follows:

"*The theory of the law is that the implied warranty of seaworthiness, shall protect the owner of the cargo until his policy of insurance commences to run.*"

And the Chief Justice also quoted the words of Field *J.*, in Cohn *v.* Davidson, 2 Q. B. D., 455, who said:

"No degree of seaworthiness for the voyage, at any time anterior to the commencement of the risk, will be of any avail to the assured unless the seaworthiness existed at the time of sailing from the port of loading. *As therefore the merchant*, in a case like the present, *would not be entitled to recover against his underwriter by reason of the breach of the warranty in sailing in an unseaworthy ship*, it would follow that, if the warranty to be implied on the part of the shipowner is to be exhausted, by his having the ship seaworthy at an anterior period *the merchant would lose that complete indemnity, by means of the two contracts taken together, which it is the universal habit and practice of mercantile men, to endeavor to procure.*"

The reason of the implied warranty is "that it takes away all temptation to expose life and property to the dangers of the seas in vessels not fit to encounter them" (per Curtis *J.*, in Bullard *v.* Roger W. Ins. Co., 1 Curt., 155) and that "every relaxation of the common law in relation to the duties and responsibilities of the owners of carrier ships *is founded in bad policy* and detrimental to the general interest of commerce" (per Story *J.*, in the Sch. *Reeside*, 2 Sum., 575).

In the *Edwin I. Morrison* this court said it was unwilling "to relax the *important and salutary rule in respect to seaworthiness*," quoting the *Reeside supra* and Douglas *v.* Scougall, 4 Dow, H. L., 269.

II.—Such an exemption as is claimed, is contrary to the terms of the Harter Act, Chapter 105 of the Laws of 1893:

Discussing the *third* section of the Harter Act, the Honorable Addison Brown, said:

"There is no question here of latent defects in the structure of the ship, but only of due diligence in inspection, maintenance, and repair, and the Harter Act does not establish any new rule of diligence as to either of those subjects. The obligations of due diligence to make the ship seaworthy are in

all respects the same as before the Act." The *Alvena*, 74 F. R., 252, 254.

In return for the exemptions in the third section, the second section contained a prohibition of any clauses avoiding or weakening the shipowner's obligations as to seaworthiness. In the report of the Committee on Interstate and Foreign Commerce was embodied a petition of the Glasgow Corn Trade Association to the Marquis of Salisbury (already considered and quoted in an opinion of this Court) which set forth among the intolerable evils of bills of lading then existing, that they provide for—

" defect or insufficiency of the hull, machinery or fittings of a vessel, whether occurring before or after receiving the goods on board."

The *Delaware*, 161 U. S., 459, 472.

Accordingly, before giving the vessel owner any immunity or benefits, the Harter Act begins by prohibiting these various attempts by the shipowner to contract himself out of his own duties, as distinguished from his liabilities for the acts of his servants.

THE HARTER ACT.

" AN ACT relating to navigation of vessels, bills of lading and to certain obligations, duties and rights in connection with the carriage of property.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall not be lawful for the manager, agent, master or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant or agreement whereby it, he or they shall be relieved from liability for loss or damage arising from negligence, fault or failure in proper loading, stowage, custody, care or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.

SEC. 2. That it shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports, her owner, master, agent or manager, to insert in any bill of lading or

shipping document any covenant or agreement whereby the *obligations* of the owner or owners of said vessel *to exercise due diligence, properly equip, man, provision and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage*, or whereby the obligations of the master, officers, agents or servants to carefully handle and stow her cargo, and to care for and properly deliver same, shall in any wise be lessened, weakened or avoided."

It will be observed that Congress recognized the *obligations* (the plural is important) of the owner as of two kinds.

1. The obligation of the owner to exercise due diligence to properly equip, man, provision and outfit said vessel.

2. The obligation to make said vessel seaworthy.

This distinction has been recognized by this Court.

The warranty of seaworthiness is *absolute*, and the Court also says that the duty to carefully stow cargo is limited to *due* diligence.

In Lawrence *v.* Minturn, 17 How., 115, Curtis, *J.*, said:

"The master is bound to use *due diligence and skill in stowing and staying the cargo*, but there is no absolute warranty that what is done shall prove sufficient."

It is also true that the obligation to have a competent master and crew is not one of warranty, but of due diligence in selection. Neither does the owner warrant that the ship will have coal or provisions sufficient for the voyage, but only that due care has been taken to equip and supply the vessel.

The grammatical construction bears out the above contention. The conjunction "*and*" is used twice in the sentence:

"Whereby the obligations of the owner or owners of said vessel to exercise due diligence, properly equip, man, provision *and* outfit said vessel, *and* to make said vessel seaworthy."

The verbs "*to exercise*" and "*to make*," coupled by the second "and" go back to "obligations," while the first "and" connecting the words "provision" and "outfit" join those words to the "*due diligence.*" The use of the word "properly" also confirms this; it qualifies the "*due diligence*" and explains that it applies to each of the items, *equip, man, provision, outfit;* but it has no application

to the "*make said vessel seaworthy*," which is left, as before, an absolute obligation.

Full force must be given to the words, "*in anywise be lessened, weakened or avoided.*"

It is plain that Congress was dealing with a well-defined *obligation*, and one whose degree of binding force it declared should not be "lessened, weakened or avoided" and this could only be done by keeping it exactly as it then existed.

This separation is made more clear by reference to the original bill prepared by special committee of the New York Chamber of Commerce on March 6, 1884, which passed the House of Representatives on February 3d, 1885. Section 3d of this first bill is the prototype of the second Section of the Harter Act.

The original section was as follows:

"SECTION 3.—That it shall not be lawful for any such vessel, her owners, master, agent or manager, to insert in any bill of lading any clause, covenant or agreement whereby the obligations of the owners of said vessel to properly equip, man, provision and outfit such vessel, *and in every way and manner within their, his or her power to render said vessel seaworthy and capable of performing her intended voyage*, shall in any wise be lessened, weakened or avoided; and all provisions and clauses contained in any bill of lading issued by any such public carrier relieving from liability the vessel, her owner or master for them, or his neglect, or for any improper condition of the vessel shall be null and void and of no effect in law."

Wendt's Papers on Maritime Legislation, p. 403, 3d Edition, London, 1888.

Obviously there were here two distinct obligations of the vessel owner; and the one relating to seaworthiness was then made a relative matter of the owner's opportunity and diligence. In the Harter measure, as it originally passed the House all qualifications of this latter obligation were struck out so as to read "and *make* said vessel seaworthy, etc.," restoring the owner's full warranty. The Senate wisely inserted the qualification of "to use due diligence" as to the *first* obligation to properly *equip, man, provision and outfit*, but carefully left the duty of *seaworthiness* unqualified as by the existing law.

No doubt these stipulations in contracts about "insufficiency

and defects of vessels" which greatly increased between 1885 and 1893, moved Congress to these significant changes.

The complaint of the Glasgow Corn Trade especially called attention to this abuse of the owner's power of framing one-sided bills of lading.

Congress then had before it a distinct grievance of business men that the obligation of seaworthiness was being avoided by these contracts against "defect or insufficiency of hull, machinery or fittings, even at time of loading."

Congress declared at the outset that this obligation of seaworthiness should not be in any wise lessened, weakened or avoided.

It was plainly intended, therefore, to stop these stipulations against defects in the vessel, since that was the only way that this obligation of the shipowner had been defeated.

Thus the English Court of Appeal in interpreting the Harter Act as embodied in a bill of lading given at Baltimore, held:

"That it was the duty of the owner *to ensure* that the ship was in a perfectly seaworthy condition before she left port, and that it was not enough to appoint a competent agent."

Dobell *v.* the Rossmore Steamship Co. (1895), 2 Queen's Bench, 408.

The obligation of the shipowner to make his vessel seaworthy had been abundantly settled in the United States by decisions before this act of Congress.

The *Northern Belle*, 9 Wall, 526.
Work *v.* Leathers, 97 U. S., 379.
The *Caledonia* (at circuit), 43 F. R., 681, 685.
Liverpool Steam Co. *v.* Phenix Co., 129 U. S., 397, 438.

In case of damage by leaks in a deck which had been repaired before starting on the voyage, Judge Brown said:

"The leak having occurred through the deck, the burden of proof is upon the libellants (here the shipowners) to show that the deck when the brig sailed was fit to withstand all the ordinary hazards of the voyage at that season, and that it was free from all latent, as well as visible defects."

Hubert *v.* Recknagel, 13 F. R., 912.

III.—By the general maritime law the shipowner is liable for libellant's damage.

It is confidently submitted that among all modern seafaring countries the shipowner is not relieved for defective riveting, merely because his surveyor did not discover it when the vessel was constructed.

Art. 560 of the German Commercial Code is:

"In every kind of contract of affreightment, the owner has to deliver the ship in a seaworthy condition. The owner is liable for every damage that arises from defective condition of the vessel unless the defect could not be discovered in spite of all possible care (dass die Mängel aller Sorgfalt ungeachtet nicht zü entdecken waren).

Commenting upon this article, Dr. Lewis, in his treastise, says:

"Wenn das Gesetzbuch den Befrachter von der Verhaftung nur dadurch befreien lässt dass die Mängel aller Sorgfalt ungeachtet nicht zu entdecken waren, so fordert es von demselben mehr, als dass er die gehörige Sorgfalt (diligentia diligentis patris familias) zur Leistung eines seetüchtigen Schiffes anwende. Derselbe hat die Seetüchtigkeit selbst unbedingt zu gewähren. Er wird nicht dadurch befreit dass er das Schiff durch Zimmerleute nachsehen, dichten, kalfatern, repariren lässt, sondern er hat auch für die Versehen dieser Leute einzustehen und haftet nicht nur für *culpa in eligendo*. 'Nur wenn es unter gewöhnlichen Umständen ausserhalb der Möglichkeit gelegen 'hat', den Mangel zu entdecken,' wird derselbe von der oben gedachten Verplichtung befreit." Prot. VIII., s. 3848.

"While the Code allows the owner to release himself from the liability only when the defects were not discovered in spite of every precaution, yet it demands more of him than that he exercise due care (the diligence of the father of a family) in furnishing a seaworthy ship. He has unconditionally to warrant the seaworthiness itself. He will not be relieved, because he has had the vessel inspected, caulked, repaired and tightened by carpenters. On the contrary, he is responsible for the neglects of these people and is liable not merely for wrong selection of them. 'Only when in ordinary circumstances it is beyond the bounds of possibility to discover the fault,' will he be relieved from the above obligation."

Lewis Das Deutsche Seerecht, Vol. I. (2d Ed.), p. 247.

Also Article 297 of the French Code of Commerce:

"The master loses his freight and is liable for the damages of the affreighter, if the latter proves that when the ship sets sail it was not in a navigable condition. This proof is admissible, notwithstanding the certificates of inspection at departure."

This is almost the identical terms of the Ordonnance de la Marine of 1681, book III., title 3, art. 12.

Notwithstanding the employ of the best surveyors and the complete ignorance of the shipowner, he may thus become liable for all resulting damages from sending an unfit ship to sea.

Prof. Lyon-Caen, of the law faculty of Paris, has recently written :

" It is very severe to condemn the owner (fréteur) in damages, when he was ignorant of the bad state of his vessel, and had it inspected ; it makes him liable for a defect which escaped even the attention of the expert surveyors (quand il a ignoré le mauvais état de son navire et a fait operer la visite ; on le rend responsable d'un vice qui a échappé à l'attention des experts, visiteurs eux-mêmes.")

Traité de Droit Maritime. Vol. 1, p. 449, Paris, 1894.

Valin, in his commentary upon the older provision of the Ordonnance said :

" This penalty, however, should not appear too rigorous, since by the nature of the contract of affreightment, the master is necessarily held to warrant his ship to be good and perfectly in condition to make the voyage in question under penalty of all costs, expenses and damages."

This author adds that surveys and inspections do not change this liability, because such examinations do not discover

les vices interieurs et cashés, dont par conséquent le propriétaire ou le maître demeure toujours responsable, et cela avec d'autant plus de justice qu'il ne peut pas ignorer le mauvais état du navire : mais quand il l'ignoreroit, il en seroit de même, étant nécessairement tenu de fournir bon et capable de faire voyage."

Nouveau Commentaire, vol. 1, pp. 653, 654, (Rochelle, 1766).

Discussing these articles, Desjardins asks :

"May the owner (fréteur) stipulate that he shall not be responsible for unseaworthiness even before the departure ? It may certainly be maintained that the obligation to deliver a ship in a serviceable condition is not merely of the nature, but the essence of the contract of affreightment. Is it immoral and odious to engage to send a rotten ship to sea, and at the same time a crew to their death ? Is not the stipulation, which in such case would discharge the owner's responsibility, contrary to public order ? The question is grave."

He finally and reluctantly concludes that such a stipulation prepared in special terms might stand, but it should never be inferred and must be clearly expressed.

Traité de droit Maritime, vol. 3, p. 518, Paris, 1882.

The power of the shipowner to contract away his obligation to have a seaworthy vessel was under careful discussion at the International Congress of Antwerp in 1885. The solution of this question, contained in Article II, was:

"Il doit être interdit aux propriétaires de navires de s'exonerer d'avance de leur responsabilité par une clause inserérée dans le contrat d'affrétement, le connaissement, ou toute autre convention:

A. Pour tous les faits de leurs capitaines ou de leurs preposés qui tendraient à compromettre le parfait état de navigabilité des navires.

B. Pour tous ceux qui aurient pour effet de causer des damages par vice d'arrimage, defaut de soins, ou incomplete deliverance des marchandises confiées à leur garde.

It should be prohibited to shipowners to exonerate themselves from their liability in advance, by a clause inserted in a contract of affreightment, bill of lading or any other agreement:

A. For any act of their masters or their officers tending to compromise the perfect condition of seaworthiness of the ships.

B. For any act which would cause damage through improper stowage, want of care, or incomplete delivery of the goods entrusted to their care.

5 Valroger, Droit Maritime, p. 397.

In May, 1886, the Chambers of Commerce of Bremen and Hamburg prepared a proposed form of bill of lading with rules for liability, in which the first provision was:

"Rule I.—The shipowner is responsible for the proper fitting out of the vessel and for its being equipped, manned, and provisioned, and *in a seaworthy condition*, capable to undertake the intended voyage, also for errors or negligence of his employees respecting proper stowage, care, treatment, and delivery of the cargo. All agreements and clauses to the contrary to be null and void and of no legally binding force."

Wendt's Papers on Maritime Legislation, p. 490 (3d Ed., London, 1888.)

IV.—SUCH BEING THE LAW OF THE PRINCIPAL MARITIME STATES, IT IS TO BE PRESUMED THAT CONGRESS DID NOT INTEND BY THE ACT OF 1893, TO PUT OUR OWN LAW OUT OF HARMONY WITH THE LAW OF THE SEA.

The wide and generous immunity for the acts of the ship-owner's servants given by the third section is predicated by the second section, upon a firm adherence to the salutary obligation of the owner to have a seaworthy ship.

The decree of the courts below should be reversed, and the cause remanded to the District Court of the United States for the Eastern District of New York, with direction to enter a decree for libellant with costs.

HARRINGTON PUTNAM,
Advocate.

Dated April 14th, 1897.

APPENDIX.

DESCRIPTION OF "CLAGGING" OF SHIP'S PLATES, IN BUILDING BY W. CLARK RUSSELL.

Having mentioned a deposition of a shipmaster, who suddenly found four feet of water in his forehold, the author continues:

"This deposition worked very strongly in my head the other day when I happened to find myself standing under the bends of the towering iron skeleton of a ship that, when completed, would be 100 A 1, and qualified to carry three thousand tons of merchandise. The hammering all about me was sharp and furious, the sparks flew wildly, and as the white-hot rivets popped out of the holes they were cut and hammered by the men as though they were carrots. There were other ships on a line with this, one completely plated and painted, another half finished, a third a mere outline of frames, and keelson and stern pieces. The scene was an imposing one, and especially imposing was the appearance of the completed ship with the polish of her clean metal run and the gilt tracings about her figurehead and quarters. And yet when I turned my eyes from her to the skeleton under which I was standing I somehow felt a good deal of my admiration leaking away from me. I called to a man who was hammering close beside me. "Do you know what clagging is, my friend?"

"Ay," said he, looking at me with a broad grin, "Ye dorn't need to go very far to find out the meanin' o' that word."

"These things," said I, striking a long curve of metal, which in a wooden ship would be spoken of as ribs, are called frames, aren't they?"

"Ay, those are the frames," he answered.

"I suppose they have a good deal of weight to bear, a good deal of pressure to resist?" said I.

"Rather," he replied; "why, they're pretty nigh the ship, man."

"Then, what do you make of that flaw there, and that crack there, and there, and there?" said I, pointing to the places as I spoke.

"Pooh!" said he, "when the plates are on that's all covered up."

"Yes," said I, "so I suppose; but do you know I don't see a frame that hasn't three or four—and there's one with six—of those cracks and flaws plain to be viewed upon it. Considering the dimensions of this vessel, do you think it wise—

I'm speaking in the interest of human lives, my man—to put in such defective iron as this?"

He made no answer, aud was about to resume his work.

"Here," said I, "there is no thirstier work than hammering," and I gave him a shilling. "How do you get the iron plates which cover these ribs to fit?"

"They're rolled," he replied, pocketing the shilling with a look around.

"The part of the plate that overhangs another," said I, "is, I think, called the landing."

"Ay," said he, "the lannin', that's right."

"Do you see this landing here?" I asked. "I'm not sure that I couldn't put my little finger between it."

"Oh, the rivets 'll draw that into its place," said the man.

"True," I exclaimed; "but you wouldn't call it a fit?"

"No," he answered; "I wouldn't call it a fit, but the rivets 'll make it one."

"But don't you see," said I, "that by prizing these plates together with the rivets you are putting work on the rivets which they ought not to bear? If the blow of a sea springs the rivets the plates must yawn open. At this rate it seems to me that the rivets not only keep the plates together, but actually gives the hull its shape."

"What are ye, sir?" said he to me; "a surveyor?"

"No, my man," I replied; "if I were I should be talking to your master, not to you. Here's another point that strikes me as worth noticing; Look at these rivet-holes. They're all punched, I observe."

"Certainly they're punched," he answered.

"But don't you think they ought to be drilled?" I asked, punching is bound to weaken the rivet-holes by cracking and dislocating the fibres of the metal around them, and rendering them all the less fit as a hold for the rivets."

"Drilliug 'ud be much better, of course," said the man, but it ud be pretty nigh double the expense, and that ud be going the wrong way to what the shipowners want."

"But here again I see another curious feature," said I. Look through these rivet-holes, one after another, as many as you choose. There's actually not a single hole in the front plates that corresponds with the holes in the plates at the back. How on earth are you going to drive a rivet through such a hole as that for instance?" Said I, pointing to a hole that was so much lower than the hole behind it that the apertures where the two plates met resembled a half moon.

"Oh, we'll rivet 'em somehow," he answered laughingly, and without even glancing at the holes to which I sought to direct his attention.

At this juncture somebody who might have been the manager came sniffing curiously about me; the man went on with his

work, and I moved off. Before quitting the yard, however, I walked over to the other vessels—the incomplete ones, I mean—and had a look at them. Here I found precisely the same kind of workmanship and material—the frames full of cracks and flaws, the rivet-holes roughly punched, and not a single hole corresponding with the holes behind; the "landings" yawning and waiting for the rivets to be prized and warped and severely strained into their places. I am not writing learnedly; I am avoiding all technicalities, as I wish the land-going public who know nothing about marine terms to understand me. Neither do I assert that this shipbuilding yard which I inspected is a typical one. But this much I will say, and as a man who has some small knowledge of the power and fury of the sea in a time of tempest—that were I a forecastle-hand and had to choose between one of these brand-new, A 1 iron steamships of from two thousand to three thousand tons gross and one of the old coasters which have long since been condemned and rendered impossible, I should be perfectly content to abide by the toss of a coin for either, satisfied that, so far as security at sea goes, there would be just as much promise of my speedy dissolution aboard such a brand-new steamer as aboard the sievelike old coffin. It is not hard to understand what a reproach this kind of vessel is to us as a maritime nation and how it has come about. The same fierce competition that covers our tables with butter made of fat, and coffee made out of old beans, is covering the ocean with the sort of ships I am writing of. The problem is now how to build the cheapest steamer to carry a maximum cargo on a minimum draft of water, and to pass the surveyors as fit to go to sea and do heavy work there. The shipbuilders are not to blame. They will do good work for good money; but if good money is not forthcoming, though some kind of work be expected, then they will give you frames which are only fit to sell for old iron; the workmanship will be mere "clagging" the plates will be wrenched and warped into any kind of abominable fit by the rivets; the whole structure and the lives of the people who commit themselves to be will be made to depend upon points which no honest shipwright would dream of reckoning as factors in the binding and holding powers of the fabric; and the false and frail contrivance, doctored up and smothered over with paint, will be launched with all haste, that the account may be settled, and the next order proceeded with at once." * *

"And now let me say here a few words on the subject of marine surveying.

"If there be one class of responsible men more than another who should be wholly above suspicion, who should be pos-

sessed of a moral courage equal, under all circumstances, to the unbending and unfaltering discharge of the duties accepted by them, they should consist, one would think, of the men employed by Lloyd's and the Board of Trade to inspect the construction of ships, and to pronounce upon their fitness as seagoing fabrics. You have only to consider what is involved in the duties of marine surveyors to appreciate the high and extraordinary character of their obligations. Upon their capacity to distinguish between good and bad work, and upon their courage as judges to whom their employers intrust the exercise of the widest possible discretion, practically depends the life of every human being who goes to sea as a sailor or as a passenger. Of course, the difficulties of the vocation, humanly speaking, are not hard to understand. We may appreciate the embarrassment a surveyor labors under in having to condemn the work of a shipbuilder with whom he is on very friendly terms, to say no more. The temptation to inspect any other part of the fabric than that which imperatively calls for condemnation must, under certain circumstances, be very great. But let all this be freely admitted. Life is more precious than class sensibilities, and if an evil is to flourish only on the condition that nothing is said about it, most of us will agree that it is high time to cultivate candor, in that direction at least.

"I have no hesitation in saying that a large proportion of the marine surveying of the day is one of the most glaring, as it certainly is the cruelest of the shams of the period. Samples of work are passed which, were there the least sincerity and conscience in the minds of those who decide upon them, could under no possibility have left the yards in which they were produced. Men, women, and children are sent to sea in structures which never would have been permitted to quit the only places they are safe on—I mean the dry land—had the surveyors put any shadow of honesty into the duties they are appointed to discharge." * *

"There is not a shipmaster in the country who is not sensible of the necessity of a speedy reform in this matter; and there is not a passenger who would not eagerly join in the cry for reformation were even but a very little bit of the truth published in language which should be intelligible to the landsman." Plates and Rivets by W. Clark Russell, 1887.